

Private Letter Ruling: Partnership may file composite returns on behalf of nonresident individual partners who have no other sources of Illinois income.

January 3, 2001

Dear:

This is in response to your letter dated December 20, 2000 in which you request permission to file a composite tax return on behalf of the above-referenced partnerships. This shall constitute a Private Letter Ruling. Accordingly, it will bind the Department only with respect to the listed partnerships for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither the listed partnerships nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

The facts and analysis as you have presented are as follows:

We are writing to you on behalf of each of the above-referenced partnerships ("the partnerships"), in order to request permission to file a single composite tax return in your state for the 2000 and subsequent tax years. This single composite return will include source income allocated to your state from investments held by one or more of the partnerships. We also request permission to allow revocable and irrevocable trusts to participate in this composite return. If granted permission to file this composite return, we agree to meet the following terms.

Each partner electing to be included in this composite tax return:

- is a limited partner and an inactive participant,
- is an individual or trust,
- is a full-year nonresident of your state,
- will have no other source income from your state,
- will not file an individual return in your state,
- agrees to sign a statement affirming their eligibility and their election to be included in the composite tax return,
- agrees to claim a single standard deduction
- agrees to waive the right to claim exemptions and credits that would otherwise be available, and
- agrees to have the tax on sourced income calculated at your state's highest marginal tax rate.

It is important to note that these partnerships are not doing business in your state. Their sole source of income derived from your state is their distributive share of income from their investment in underlying partnerships. Due to these partnerships' lack of control over what the underlying partnerships invest in, the partnerships may or may not have income sourced to your state in a given tax year. Therefore, although we are requesting permission to file a composite tax return in your state, the partnerships will ultimately only file a composite tax return in a given tax year to the extent that they have source income from your state during that tax year.

The purpose of allowing composite tax returns is to ease the administrative burden on your state having to process a large number of individual tax returns and associated payments, as well as to ease the compliance efforts of the taxpayer filing the returns. Since we anticipate that a significant number of partners will elect to be included in this composite tax return, the number of individual returns that will have to be filed with and processed by your state will diminish considerably. Allowing trusts to participate in this composite filing will further reduce the number of returns that require processing by your state. We therefore believe that your approval of this request will be beneficial to both your state and the partnerships.

Attached is a schedule detailing the name, federal employer identification number and the number of partners in each partnership. Also attached is an executed power of attorney form for each of the partnerships authorizing us to represent them in this matter.

Please indicate your response by signing one of the options on pages 4-5:

- If your state approves this request, please sign in the space marked “A” and return this letter to our office in the enclosed self addressed envelope.
- If your state denies the request to include trusts, or certain kinds of trusts, we respectfully request permission to file the single composite return excluding the trusts that are ineligible to participate. If your state approves filing a single composite return excluding trusts or certain kinds of trusts, please sign in the space marked “B” and return this letter to our office in the enclosed self addressed envelope.
- If your state chooses to deny the filing of a single composite return, we respectfully request permission to file composite returns for each partnership separately including trusts. These separate composite returns will include partners that only have source income from one or more of the partnerships. If your state approves this request, please sign in the space marked “C” and return this letter to our office in the enclosed self addressed envelope.
- If your state chooses to deny the filing of separate composite returns including trusts, we respectfully request permission to file composite returns for each partnership separately excluding trusts. These separate composite returns will include partners that only have source income from one or more of the partnerships. If your state approves this request, please sign in the space marked “D” and return this letter to our office in the enclosed self addressed envelope.

RULING

Illinois Income Tax Act (“the IITA”; 35 ILCS 5/101 *et seq.*) section 502(a) states the general rule that every person liable for Illinois income tax must file an income tax return. IITA section 502(f) provides an exception to this general rule in the case of certain taxpayers that are partners or S corporation shareholders. Section 502(f) states:

The Department may promulgate regulations to permit nonresident individual partners of the same partnership, nonresident Subchapter S corporation shareholders of the same

Subchapter S corporation, and nonresident individuals transacting an insurance business in Illinois under a Lloyds plan of operation, and nonresident individual members of the same limited liability company that is treated as a partnership under Section 1501(a)(16) of [the IITA], to file composite individual income tax returns reflecting the composite income of such individuals allocable to Illinois and to make composite individual income tax payments.

Pursuant to this authority, Illinois Income Tax Regulations section 100.5100(a) states:

In general. A composite return may be filed on behalf of nonresident individuals, trusts, and estates who derive income from Illinois and who are partners, or S corporation shareholders, or who transact insurance business under a Lloyds plan of operation. The respective partnership, S corporation or insurance business shall file such composite return and shall make composite income tax payments.

Regarding the right to be included in a composite return, Regulations section 100.5100(b) adds:

Eligibility. The right to be included in a composite return is limited to nonresident and resident individuals, trusts, and estates who are partners of the same partnership, shareholders of the same S corporation, or individuals transacting an insurance business in Illinois under a Lloyd's plan of operation. The eligibility of resident individuals, trusts, and estates is conditioned upon compliance with subsection (c) of this Regulation.

Example: The Acme partnership consists of a general partner and fifty (50) limited partners. The general partner is a regular corporation, and the limited partners consist of twenty-six (26) nonresident individuals, twenty (20) resident individuals, an S Corporation, a partnership, a nonresident trust, and an estate. The twenty-six (26) nonresident individuals, the nonresident trust, and the nonresident estate are automatically eligible to be included in a composite return. The twenty (20) resident individuals may be included in the composite return with the nonresidents if the Department grants their petition. None of the other entities may be included in the composite return.

Regulations section 100.5100(c) indicates the circumstances where a petition must be filed with the Department in order to be included in a composite return.

Petition for Residents. Individuals, trusts, and estates that are residents of Illinois may be included in a composite return if the authorized agent files a petition with the Department of Revenue and the petition is granted. The Department shall grant the petition if the authorized agent clearly demonstrates that no other method of filing would achieve the same degree of compliance and administrative ease for both the Department and the taxpayers. Factors to be considered in granting the petition include: the quantity of partners or shareholders involved; the inability of the authorized agent to file the composite return except in this manner; and the availability of a reliable method for claiming credit on the separate returns pursuant to Section 100.5712. The petition must be filed prior to the end of the authorized agent's taxable year, and the petition must be granted or denied prior to the due date of the return without regard to extensions.

Neither the IITA nor the Regulations allow for a single composite return to be filed by multiple partnerships. Accordingly, a single composite return may not be filed on behalf of all of the above-

referenced partnerships. However, each of the above-referenced partnerships may file a composite return that includes the Illinois source items for each of the nonresident individual and nonresident trust partners of the respective partnerships. Under Illinois Income Tax Regulations section 100.5100(b), the nonresident individual partners and nonresident trust partners are automatically eligible to be included in the composite return. Specific authorization from the Department is here not required. You may note that this ruling is consistent with your "space marked C."

This ruling applies to the 2000 taxable year and all future years during which the pertinent statutory law, case law, and rules and material facts discussed above remain unchanged. The facts upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts in this ruling.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)